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Attorneys for Plaintiff Blendtec Inc.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

BLENDTEC INC., a Utah corporation,

Plaintiff,

vs.

BLENDJET, INC., a Delaware corporation,

Defendant.

**PLAINTIFF BLENDTEC INC.’S
MOTION TO QUASH SUBPOENAS
TO SERVICE PROVIDERS (BYU
AND ENLISTED VENTURES)**

Civil No. 2:21-cv-00668-TC-DBP

Judge Tena Campbell
Magistrate Judge Dustin B. Pead

Pursuant to FRCP 26, 34, and 45(d)(3), Blendtec moves to quash subpoenas served upon two third parties retained by Blendtec to provide limited services (BYU and Enlisted Ventures (“Service Provider Subpoenas”) (**Exhibit A**). Blendtec served objections to the Service Provider Subpoenas on December 7, 2022 (**Exhibits B-C**). Blendtec also attempted to meet and confer with Blendjet on this issue, but Blendjet refused to meet and confer until after the deadline to respond to the subpoenas (**Exhibit D**).

As set forth in Blendtec's objections to the Service Provider Subpoenas (Exhibit B), Blendtec moves to quash the subpoenas because they request documents to which Blendtec has a personal right or privilege. *See, e.g., Anderson v. Heartland Coca-Cola*, 2022 WL 444092 at *3 (D. Kan. 2022) ("where the party seeking to challenge the subpoena has a personal right or privilege with respect to the subject matter requested in the subpoena" that party may move to quash subpoena) (unpublished). Blendtec has a personal and proprietary interest in the subpoenaed documents as it paid for and owns its service providers' work product. *See* Georgeson Declaration (**Exhibit E**) at ¶¶2-3, 6. The subpoenaed documents also reflect and constitute Blendtec's confidential information which Blendtec has an interest in protecting. *Id.* *See Curtis Park Grp. v. Allied World*, 2021 WL 1022703, at *3 (D. Colo. 2021) (objection to subpoena based on "ownership interest" in subpoenaed documents is proper); *Malibu v. Doe*, 2013 WL 24526, at *2 (D. Colo. 2013) (court may quash subpoena based on a party's claim of privilege, personal interest, or proprietary interest); *Nunes v. Rushton*, 2015 WL 3537018, at *3, n.5 (D. Utah 2015) (addressing party's objections to subpoena stemming from "personal interest or a proprietary interest in the documents").

Next, the documents subpoenaed in the virtually identical Service Provider Subpoenas are within Blendtec's possession or control and party discovery is ongoing. Georgeson Decl. at ¶5. Despite this, Blendjet failed to request the subpoenaed documents from Blendtec.¹ Blendtec will produce relevant documents in response to proper document requests, and there is no need to

¹ Blendjet's RFPs requested "documents that comprise or refer to surveys, focus groups, or market studies . . . in connection with Blendtec Marks." In response, Blendtec produced studies by Enlisted Ventures and BYU and the raw data for the BYU study. Instead of inquiring further, Blendjet issued the Service Provider Subpoenas.

burden third parties at this point. *See Martley v. City of Basehor*, 2022 U.S. Dist. LEXIS 79427, at *8-9 (D. Kan. 2022) (“document requests to a party, rather than subpoenas to the custodial non-party, are the appropriate method to obtain discovery”) (granting party’s motion to quash subpoena designed to circumvent Rule 34).

Blendtec seeks FRCP 37(a)(5)(A)(ii) attorneys’ fees.

DATED this 9th day of December, 2022.

DORSEY & WHITNEY LLP

/s/ Tamara L. Kapaloski

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of December , 2022, a true and correct copy of the foregoing document was served on counsel of record via email at the following email addresses:

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